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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1936

| | |
|---|---|
| HOMER S. CUMMINGS, Attorney General of the United States, and W. A. JULIAN, as Treasurer of the United States, *Petitioners*, *v.* DEUTSCHE BANK UND DISCONTO-GESELLSCHAFT, a Corporation. | No. 254 |

## BRIEF FOR PLAINTIFF-RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

### OPINIONS BELOW

The memorandum opinion of the Supreme Court of the District of Columbia is not reported (R. 8). The opinion of the United States Court of Appeals for the District of Columbia, per Groner, *J.* (R. 13), and the subsequent *per curiam* opinion on motion for rehearing (R. 26) are reported in 83 F. (2d) 554, 562.

### JURISDICTION

The opinion of the United States Court of Appeals for the District of Columbia was rendered February 17, 1936.

On motion for rehearing a *per curiam* opinion was rendered on May 4, 1936. The jurisdiction of this Court is invoked under the provisions of Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

## STATUTE INVOLVED

Public Resolution No. 53, 73rd Congress (48 Stat. 1267, 1268, 1269), a full text of which is annexed hereto and marked Appendix A, provides in part as follows:

> "*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That so long as Germany is in arrears in any payments of principal or interest: * * * under the debt-funding agreement between Germany and the United States, dated June 23, 1930, with respect to Germany's obligations remaining on account of awards, including interest thereon, entered and to be entered by the Mixed Claims Commission, United States and Germany, *all payments,* conveyances, transfers, or deliveries of money or property or the income, issues, profits, and/or avails thereof *authorized or directed* to be made under the Trading with the Enemy Act, as amended, or the Settlement of War Claims Act of 1928, as amended, whether or not a judgment or decree has been entered with respect thereto, shall be postponed and the money or property, or the income, issues, profits, and/or avails thereof reserved. * * * *Provided, further,* That the President may, in his sole discretion, remove the restriction as to any of the cases or classes of cases in relation to which payments, conveyances, transfers, or deliveries have been postponed under this resolution." (Italics ours.)

The Treaty of Berlin is in no way involved herein.

## QUESTIONS PRESENTED

1. Whether Public Resolution No. 53 operated as a withdrawal by Congress of the right of owners of property to sue for its recovery as provided by Section 9 of the Trading with the Enemy Act as amended by the Settlement of War Claims Act of 1928.

2. Whether, upon filing its consent as the German owner to the retention of and use by the United States Government of 20% of its property, the plaintiff did not acquire under the Settlement of War Claims Act of 1928 a vested right which could not be affected by the subsequent passage of Public Resolution No. 53 postponing the return of said property until Germany shall comply with the debt-funding agreement of 1930 (Annual Report of Secretary of Treasury 1930, p. 341).

3. Whether Congress by vesting arbitrary discretion in the President wholly or partially to nullify Public Resolution No. 53 at his own will by returning property to some owners under the Act and refusing to return to others, unlawfully delegated its legislative power to the President.

## STATEMENT

The action is brought under the express authorization of the Trading with the Enemy Act as amended by the Settlement of War Claims Act of 1928 (45 Stat. 254), which directed that there be returned to every German 80% of his or its property which had been seized under the Trading with the Enemy Act (40 Stat. 411), provided he filed a consent to the retention and use by the United States of the remaining 20% of said property. The pertinent sections of the Trading with the Enemy Act as amended by

the Settlement of War Claims Act are set forth in Appendix B.

Plaintiff is a corporation organized and existing under the laws of Germany (R. 2) and its property was seized by the Custodian pursuant to the terms of the Trading with the Enemy Act (R. 3).

Subsequent to the passage of the Settlement of War Claims Act of 1928, plaintiff filed its notice of claim with said Custodian together with the consent to the retention and use by the United States of 20% of its property (R. 3). The return of its property was delayed owing to a warrant of attachment filed in the Supreme Court of the District of Columbia, which was dismissed by a decree of that Court, dated May 23, 1934 (R. 4). Upon said dismissal plaintiff demanded the return to it of 80% of its property (R. 3), but actual payment thereof was withheld until after the enactment of Public Resolution No. 53, 73rd Congress, approved June 27, 1934 (48 Stat. 1267), when defendants set up said Public Resolution as an authorization for the withholding from plaintiff of its property although prior to the enactment of said Public Resolution 53 the Custodian had determined plaintiff was the owner of said property and entitled to the return thereof as provided for by the Trading with the Enemy Act as amended by the Settlement of War Claims Act of 1928 (R. 4). Thereupon plaintiff instituted the present suit.

Defendants subsequently moved to dismiss the complaint (R. 7). This Motion to Dismiss was based upon Public Resolution No. 53, 73rd Congress, it being claimed that the return of the property of plaintiff, as prayed for in the Bill of Complaint, was, by virtue of said Resolution, prohibited (R. 7).

The text of the Resolution appears in the Appendix A, hereto, but its general purport is to the effect that because

the German Government is indebted to the United States under a debt-funding agreement between Germany and the United States, dated June 23, 1930, no further returns to individual Germans shall be made under the Settlement of War Claims Act until such time as the German Government shall have paid the amount it is in arrears under such debt-funding agreement of June 23, 1930, and

> "Provided further, That the President may in his sole discretion remove the restriction as to any of the cases or classes of cases * * *,"

and that his determination as to Germany being in arrears

> "shall not be subject to judicial review".

Prior to the enactment of Public Resolution 53, approximately 95% of the property taken by the Alien Property Custodian under the Trading with the Enemy Act had been, under the provisions of the Settlement of War Claims Act of 1928, returned to its former owners of the same class as Deutsche Bank und Disconto-Gesellschaft (R. 16).

## REASONS FOR DENYING THE WRIT

i. In view of the fact that prior to the enactment of Public Resolution No. 53, 73rd Congress, out of $400,000,000 worth of property seized and returnable under prior Acts, 95% thereof had already been returned, the questions herein involved are not of such general importance as to warrant the granting of a writ of certiorari.

ii. In view of the fact that Public Resolution No. 53 purporting to withhold property Congress had already ordered returned is clearly in violation of the Fifth Amendment of the Constitution, no question of substance is involved.

iii. The Court below has given proper effect to the applicable decisions of this Court.

All three of the questions suggested (Petition, pp. 4, 5) are confined to this particular Resolution and do not present any broad or general questions of law of even the slightest importance. The statute is so completely *sui generis* that it is utterly without precedent in the history of the United States, and, moreover, is not likely to find any counterpart in any law that may be passed during, as the result of, or after any future war in which the United States may become engaged. It cannot even be urged, therefore, that a decision herein will enrich the body of the law relating to war.

The first question is, in its essence, whether the particular language of this Resolution withdraws the right of the United States to be sued. What possible importance upon the body of the law can the mere interpretation of this particular statute have?

The Treaty of Berlin to which the second question refers, is, as hereinafter pointed out, not involved herein. That treaty simply recognized the power of the United States to deal with the seized property—a power which existed fully without the treaty, and as part of the inherent right of our Government.

This case deals with the right of the United States to renounce its power of confiscation, and thereafter to cancel the renunciation as to some Germans while allowing it to remain in force as to all the others. But it is clear that, in the solution of this question, the law of the United States is itself involved and not in any way the treaty.

The third question—whether the Settlement of War Claims Act conferred vested rights on the Germans—would

seem to be largely academic, in view of the fact that approximately $380,000,000 has been returned to them. If the rights of those Germans whose property was returned were vested, how can those entitled to the remaining $20,000,000 possibly have been any less so? And if such rights were vested, how can the question even be suggested, as in the second part of Question 3, whether the unlimited postponement of the return of one's property to await an event that may never happen (Germany's payment of its debt to the United States) is a deprivation of his vested rights thereto.

The quotation of the lower court's statement that "The question is of great importance" might be applied to thousands of cases in which this Court has denied certiorari, because the alleged importance was not of the type required for review by it.

## POINT I.

**IN VIEW OF THE ABSENCE OF ANY APT LANGUAGE IN PUBLIC RESOLUTION NO. 53 WITHDRAWING FROM THE FORMER OWNERS THE PRIVILEGE OF SUING THE UNITED STATES FOR THE RETURN OF THEIR PROPERTY AS PROVIDED FOR BY SECTION 9 OF THE TRADING WITH THE ENEMY ACT AS AMENDED BY THE SETTLEMENT OF WAR CLAIMS ACT OF 1928, THE CONSENT OF THE UNITED STATES TO BE SUED HAS NOT BEEN WITHDRAWN.**

In *Lynch* v. *United States,* 292 U. S. 571, this Court held that in order to deprive a war risk insurance claimant of the privilege granted to him of suing the United States for breach of an insurance contract made by the United

States with him, clear language denying him such privilege must appear in the law.

Public Resolution No. 53 contains no language forbidding the maintenance of suits.

In *Woodson* v. *Deutsche G. und S. Scheideanstalt*, 292 U. S. 449, 54 S. Ct. 804, this Court had before it the Independent Offices Appropriation Act for 1935 expressly providing with respect to the 2% tax to cover expenses as follows (48 Stat. 509, 510):

> "* * * nor shall any suit be instituted or maintained against the Alien Property Custodian * * *"

Under such circumstances, this Court was bound to declare that the suit to recover these expenses could not be maintained.

In *District of Columbia* v. *Eslin*, 183 U. S. 62, 22 Sup. Ct. 17, the plaintiffs, contractors with the District of Columbia, were awarded under an act of Congress of February 13, 1895 (28 Stat. 664) certain rates of compensation established by the board of public works. These were gratuities awarded by Congress. Subsequently, Congress passed the act of March 3d, 1897, chap. 387, providing that the act of February 13, 1895, allowing the aforesaid rates,

> "be, and the same is hereby repealed, and *all proceedings pending shall be vacated*, and no judgment heretofore rendered in pursuance of said act shall be paid." 29 Stat. 665, 669. (Italics ours.)

The same Statute was construed in *In re Hall*, 167 U. S. 38, 17 Sup. Ct. 723, where the court said (p. 725):

> "This Court had just decided that the act of February 13, 1895 (28 Stat. 644), simply conferred a gratuity upon the persons covered by its provi-

> sions; that there was no element of a legal or an equitable claim in their favor against the municipal authorities of the District, but that the act provided for a gift which was wholly without consideration. The repeal of the act took away all jurisdiction in the court of claims to proceed further, so far as concerned any rights founded upon the act so repealed."

To suggest that the Congressional return of property to its lawful owners is a gift or gratuity which once effected, may be recalled at pleasure, seems preposterous.

## POINT II.

### THE SETTLEMENT OF WAR CLAIMS ACT OF 1928 BEING A FINAL DISPOSITION OF THE CLAIMS OF FORMER GERMAN OWNERS, WHEN ITS TERMS WERE ACCEPTED BY SAID OWNERS, CREATED VESTED RIGHTS PROTECTED BY THE CONSTITUTION AND OF WHICH THEY CANNOT BE DEPRIVED BY SUBSEQUENT LEGISLATION OF CONGRESS.

There is no doubt that in accordance with the doctrine of *Chemical Foundation* v. *United States,* 272 U. S. 1, and *Woodson* v. *Deutsche G. und S. Scheideanstalt,* 292 U. S. 449, Congress had full power of disposition over the property taken from its former German owners. But, as demonstrated in the opinion below, from the time of its enactment, the Trading with the Enemy Act recognized, in Section 12, that after the end of the war any claim of any enemy to recover money or property received and held by the Custodian or deposited in the United States Treasury "shall be settled as Congress shall direct". 40 Stat. 424.

As to the *Chemical Foundation* case, Senate Report No. 273, 70th Congress, 1st Session, states as follows (p. 13):

> "So that notwithstanding the undoubted power of Congress to confiscate, reaffirmed in the *Chemical Foundation* case, Congress not only has refused to exercise that power up to the present time but has clearly by legislation asserted its policy to be the very contrary of confiscation".

To the same effect, see Senate Report No. 113, 65th Congress, 1st Session and House Report No. 17, 70th Congress, 1st Session.

After the war Congress had by various acts provided for the return of property to enemy owners. 41 Stat. 977; 42 Stat. 1511. Then, by the Settlement of War Claims Act of 1928, 45 Stat. 254, Congress provided for the absolute return of 80% of the property and the temporary retention of 20% thereof. And, by said Act, Congress definitely and finally recognized the rights of the former owners in the property and the Congressional disposition contemplated by Section 12 of the Trading with the Enemy Act intending to vest full rights of ownership in such former owners became effective. This definite and expressed intention of Congress is evidenced by many expressions in the Act, among which are the following:

> (a) Requirement of consent to the temporary retention of 20% (subdivision (m) of Section 9). None but the owner could so consent.
>
> (b) Authorization to the Custodian to withdraw outstanding demands for enemy property upon receiving 20% thereof (Sections 29 (a), 29 (b)), thus relinquishing *even the seizure* of the 80%.
>
> (c) The payment of taxes upon seized property *"as though" it "had not been seized"*. (Section 24.) So it was regarded as a cancellation of even the seizure. And the taxes could not be paid to the

United States if any of the property still belonged to it.

(d) References to the former enemy as the person *"entitled"* thereto or *"owner"* (subdivisions m. and p. of Section 9; Section 25 (e), subdivision 2; Section 26 (b), subsections (d), (g), (j) of Section 9).

(e) That the enemy may receive its entire property if, to avoid a sale thereof, he pays 20% to the Custodian (subsection m. of Section 9). *To permit him to pay 20% without giving him the property would constitute a positive fraud by the United States.*

(f) Even the full income from March 4, 1923 was directed to be paid the former enemy out of property "held in trust for such person" (Section 23), as well as his proportion of the unallocated Treasury interest (Sections 26a, b, c).

(g) Section 25 (e), added to the Trading with the Enemy Act by Section 10 of the Settlement of War Claims Act, provides for the issuance to the Custodian of 5% interest bearing certificates representing the 20% deductions, and also non-interest bearing certificates representing the claimants' interest in the so-called unallocated interest fund, which certificates, according to Section 25 (e), subdivision (2), shall be transferable.

The Act provides that upon the filing of a notice of claim and a consent to the retention and use by the United States of 20% of the property, the remaining 80% should be returned to the owner. The Deutsche Bank und Disconto Gesellschaft filed such claim and consent and is entitled to the return of 80% under the provisions of the Act. In complying with the Statute, the Deutsche Bank

und Disconto Gesellschaft obtained vested rights to 80% of the property of which it cannot be deprived (*S. S. Company* v. *Joliffe,* 2 Wall. 450; *Ettor* v. *Tacoma,* 228 U. S. 148; *Coombes* v. *Getz,* 285 U. S. 434).

No question of a gratuity is here involved and hence there is and can be no question of the lack of a vested right in a gratuity. The property was seized from German owners; it could have been, but never was, confiscated; it never was intended that it should be confiscated but was to be held subject to disposition by Congress; Congress, by the Settlement of War Claims Act, directed the return of 80% thereof to the owners upon the owners' consent to the retention and use by the United States of the remaining 20%. Since the property was once subject to confiscation, it may be said that the return was an "act of grace" but in no sense can the return of property to the owners thereof be said to be a "gratuity". And certain it is that if, in any sense, this claim can be said to be merely of "an equitable, moral, or honorary nature", then, it is, in the circumstances existing, a claim which is enforcible and which could not be denied by Public Resolution 53. (*United States* v. *Realty Company,* 163 U. S. 427).

The Treaty of Berlin (42 Stat. 1939) is utterly immaterial.

The Treaty of Berlin recognizes, of course, that the Congress had the privilege of confiscation.

No one disputes that Congress had the privilege of confiscation, but it did not exercise it. It ordered the property returned, and the return of the property is in no way inconsistent with the Treaty.

After the property had been once returned, it could not be reseized except under a due observance of the

Constitution of the United States, especially in view of the fact that the present Treaty with Germany (44 Stat. 2132) contains the following language:

> "The nationals of each High Contracting Party shall receive within the territories of the other, upon submitting to conditions imposed upon its nationals, the most constant protection and security for their persons and property, and shall enjoy in this respect that degree of protection that is required by international law. Their property shall not be taken without due process of law and without payment of just compensation."

The case of *Woodson* v. *Deutsche G. und S. Scheideanstalt*, 292 U. S. 449, does not hold that Congress did not intend to vest title in the former German owners, but simply that Congress made certain reservations with reference to the payment of expenses, not only in the original Trading with the Enemy Act, but in subsequent acts—in the Act of March 4, 1923, as well as in the Act of May 16, 1928—and therefore held that as to the 2% retained for expenses there was no vested right infringed.

In the *Woodson* case this Court said as follows (p. 454):

> "The original act, coupled with the later Acts of March 4, 1923, and May 16, 1928, plainly discloses a reservation to Congress of power to appropriate the property seized or its proceeds, *as far as might be deemed necessary, to the payment of expenses incurred in the seizure and subsequent administration.* The funds here in question are proceeds which were deducted for that purpose *when payments were made from time to time to the enemy owner.* As respects

> property or proceeds so retained by the Custodian there is no room to doubt that Congress had full power to cause it to be applied to the payment of such expenses. And, of course, Congress had ample power to ratify deductions made by the Custodian to cover such expenses . This is in effect what was done by the Act of March 28, 1934. True, it forbade the commencement or maintenance of a suit to recover funds so deducted, but this merely reflects and emphasizes the purpose to sanction and ratify the deductions by the Custodian, and *in such circumstances* does not deprive the respondent of any *vested* interest" (Italics ours).

It is only with respect to the reservations made by Congress that this Court held there was no vested interest.

To use the language of the case *In re Munster,* 36 Times L. R. (1920) 173, until further legislation, the beneficial ownership "was only in a state of suspense until an Order in Council dealing with it was made", but when legislation was once passed recognizing the right of the former owner, the rights of the former owner were revived and could not be obliterated after such revival.

There can be no difference between an owner whose rights to such return are recognized immediately after the passage of the Settlement of War Claims Act and one whose return is delayed by an attachment in a suit which is subsequently dismissed.

It is submitted that the decision of the lower court is clearly and unmistakably correct. As the lower court stated (R. 29):

> "the effect of the War Claims Act, when its terms were accepted by appellant, created vested rights in appellant protected by the Constitution, * * *"

and again (R. 30):

> "With the seizure went the declaration that the return would be subject to such conditions as Congress might apply. Several years after the close of the war, and after a formal treaty of peace, Congress named the conditions, and appellant, as is admitted, conformed to those conditions in every respect. By the ordinary rules of contract there was then a meeting of minds, and the rights which appellant asserts in this suit became fixed and vested".

## POINT III.

**PUBLIC RESOLUTION NO. 53, INVOLVING COMPLETE DELEGATION OF LEGISLATIVE POWERS BY CONGRESS TO THE PRESIDENT, FALLS DIRECTLY WITHIN THE CONDEMNATION OF *PANAMA REFINING CO.* v. *RYAN*, 293 U. S. 388, 55 S. CT. 241, AND *SCHECHTER* v. *UNITED STATES*, 295 U. S. 495, 55 S. CT. 837.**

Public Resolution No. 53 gives the President the most uncontrolled discretion, without even attempting to prescribe any criterion or basis for its exercise, viz:

> "Provided, further, that the President may, IN HIS SOLE DISCRETION, remove the restriction as to any of the cases or classes of cases in relation to which payments, conveyances, transfers or deliveries have been postponed." (Italics ours.)

Could discretion possibly be wider than to thus empower him, without any reason whatsoever, to return the property of one individual, yet retain that of another in the same situation exactly?

To use the language of Judge Cardozo in the *Schechter* case, 295 U. S. 495, 553:

"This is delegation running riot."

## POINT IV.

## THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED.

Respectfully submitted,

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JAMES J. LENIHAN,
*Counsel for Respondent.*

## APPENDIX "A"

73d Congress
2d Session

PUBLIC RESOLUTION NUMBER 53, 73D CONGRESS.
(48 Stat. 1267)

### JOINT RESOLUTION

To amend the Settlement of War Claims Act of 1928, as amended.

WHEREAS the joint resolution of the Congress of the United States, approved July 2, 1921, provides in part as follows:

> "Sec. 5. All property of the Imperial German Government, or its successor or successors, and of all German nationals, which was, on April 6, 1917, in or has since that date come into the possession or under control of, or has been the subject of a demand by the United States of America or of any of its officers, agents, or employees, from any source or by any agency whatsoever, * * * shall be retained by the United States of America and no disposition thereof made, except as shall have been heretofore or specifically hereafter shall be provided by law until such time as the Imperial German Government * * * shall have * * * made suitable provision for the satisfaction of all claims against said (Government) * * *, of all persons, wheresoever domiciled, who owe permanent allegiance to the United States of America and who have suffered, through the acts of the Imperial German Government, or its agent, * * * since July 31, 1914, loss, damage, or injury to their persons or property, directly or indirectly, whether through the ownership of shares of stock in German * * *, American,

> or other corporations, or in consequence of hostilities or of any operations of war, or otherwise * * *."

WHEREAS the Treaty between the United States and Germany of August 25, 1921, incorporated said provisions of such joint resolution and also provided in article I thereof as follows:

> "Germany undertakes to accord to the United States, and the United States shall have and enjoy, all the rights, privileges, indemnities, reparations or advantages specified in the aforesaid Joint Resolution of the Congress of the United States of July 2, 1921, including all the rights and advantages stipulated for the benefit of the United States in the Treaty of Versailles which the United States shall fully enjoy notwithstanding the fact that such Treaty has not been ratified by the United States"; and

WHEREAS by the agreement of August 10, 1922, between Germany and the United States, a Mixed Claims Commission was established to adjudicate claims of American nationals against Germany arising out of the World War; and

WHEREAS under the terms of the debt-funding agreement between Germany and the United States dated June 23, 1930, Germany agreed to pay to the United States in satisfaction of Germany's obligations remaining on account of awards, including interest thereon, entered and to be entered by the Mixed Claims Commission, United States and Germany, the sum of 40,800,000 reichsmarks for the period September 1, 1929, to March 31, 1930, and the sum of 40,800,000 reichsmarks per annum from April 1, 1930, to March 31, 1981; and

WHEREAS Germany is now in arrears in payments due under said debt-funding agreement between Germany and the United States, and has, accordingly, failed to make suitable provision for the satisfaction of the said claims against Germany:

Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That so long as Germany is in arrears in any payments of principal or interests, including interest at the rate of 5 per centum per annum on principal installments not paid when due, under the debt-funding agreement between Germany and the United States, dated June 23, 1930, with respect to Germany's obligations remaining on account of awards, including interest thereon, entered and to be entered by the Mixed Claims Commission, United States and Germany, any or all payments, conveyances, transfers, or deliveries of money or property or the income, issues, profits, and/or avails thereof authorized or directed to be made under the Trading with the Enemy Act, as amended, or the Settlement of War Claims Act of 1928, as amended, whether or not a judgment or decree has been entered with respect thereto, shall be postponed and the money or property, or the income, issues, profits and/or avails thereof reserved: *Provided, however,* That such of the funds as are from time to time available (without taking into consideration interest thereafter accruing) under the Settlement of War Claims Act of 1928, as amended, for the payment of principal and interest upon awards of said Mixed Claims Commission shall be applied when available to the payment of principal and interest upon such awards in the

same manner and to the same extent as though certain of the payments provided for in said Act had not been postponed under this resolution: *Provided further,* That the President may, in his sole discretion, remove the restriction as to any of the cases or classes of cases in relation to which payments, conveyances, transfers, or deliveries have been postponed: *And provided further,* That the action of the President in determining the period or periods in which Germany is in arrears in the payments hereinbefore described shall not be subject to judicial review.

## APPENDIX "B"

Trading With The Enemy Act as Amended by the Settlement of War Claims Act (45 Stat. 254), entitled "An Act to provide for the settlement of certain claims of American nationals against Germany, Austria, and Hungary, and of nationals of Germany, Austria, and Hungary, against the United States, and for the ultimate return of all property held by the Alien Property Custodian.", provides

> "9(b) In respect of all money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, if the President shall determine that the owner thereof at the times such money or other property was required to be so conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or at the time when it was voluntarily delivered to him or was seized by him was—
>
> * * *
>
> "9(b)(13) A partnership, association, or other unincorporated body of individuals, having its principal place of business at such time within any country other than Austria, Hungary, or Austria-Hungary, or a corporation organized or incorporated within any country other than Austria, Hungary, or Austria-Hungary, and that the written consent provided for in subsection (m)* has been filed,
>
> * * *

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*Note

Subsection (m) of Sec. 9 referred to in paragraph (13) above, is a provision of the Trading with the Enemy Act as amended by the Settlement of War Claims Act, providing as follows, omitting the immaterial parts:

"Then the President, *without any application being made therefor,* may order the payment, conveyance, transfer, assignment, or delivery of such money or other property held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine such person entitled, either to the said owner or to the person by whom said property was conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian; * * *." (Italics ours.)

* * *

"9(c) Any person whose money or other property the President is authorized to return under the provisions of subsection (b) hereof may file notice of claim for the return of such money or other property, as provided in subsection (a) hereof, and thereafter may make application to the President for allowance of such claim and/or may institute suit in equity to recover such money or other property, as provided in said subsection, and with like effect. * * *"

* * *

"9(a) That any person not an enemy or ally of enemy claiming any interest, right, or title in any

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"(m) No money or other property shall be returned under paragraph (12), (13), (14), or (16) or subsection (b) or under subsection (g) or (n) or (to the extent therein provided) under subsection (p), unless the person entitled thereto files a written consent to a postponement of the return of an amount equal to 20 per centum of the aggregate value of such money or other property (at the time, as nearly as may be, of the return) as determined by the Alien Property Custodian, and the investment of such amount in accordance with the provisions of section 25."

Section 25 provides for the investment out of the funds held by the Alien Property Custodian by the Treasurer of the United States in one or more participating certificates issued by the Secretary of the Treasury in accordance with the provisions of that section.

money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder * * * may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, * * *. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required * * * said claimant may institute a suit in equity in the Supreme Court of the District of Columbia * * * to establish the interest, right, title * * * so claimed, and if so established *the court shall order the payment,* conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest * * *". (Italics ours.)